

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-1003-MS-128



ORDER AMENDING INDIANA RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Trial Rules 5, 9.2, 23, 39, 51, 53.1, 53.2, 53.3, 55, 59, 62, 72, 77, 79, and Appendix A-2 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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Rule 5. Service and Filing of Pleading and Other Papers

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(B) Service: How made. Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or party shall be made by delivering or mailing a copy of the papers to him at his last known address.

...

(2) Service by Mail. If service is made by mail, the papers shall be deposited in the United States mail addressed to the person on whom they are being served, with postage prepaid. Service shall be deemed complete upon mailing. Proof of service of all papers permitted to be mailed may be made by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. It shall be the duty of attorneys when entering their appearance in a cause or when filing pleadings or papers therein, to have noted ~~oi~~ in the ~~e~~Chronological ~~e~~Case ~~s~~Summary or said pleadings or

papers so filed the address and telephone number of their office. Service by delivery or by mail at such address shall be deemed sufficient and complete.

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Rule 9.2. Pleading and proof of written instruments

(A) **When instrument or copy, or an Affidavit of Debt must be filed.** When any pleading allowed by these rules is founded on a written instrument, the original, or a copy thereof, must be included in or filed with the pleading. Such instrument, whether copied in the pleadings or not, shall be taken as part of the record. When any pleading allowed by these rules is founded on an account, an Affidavit of Debt, in a form substantially similar to that which is provided in Appendix A-2 to these rules, shall be attached.

...

(F) **Effect of non-compliance - Amendments.** Non-compliance with the provisions of this rule requiring a written instrument or an Affidavit of Debt to be included with the pleading may be raised by the first responsive pleading or prior motion of a party. The court, in its sound discretion, may order compliance, the reasons for noncompliance to be added to the pleadings, or allow the action to continue without further pleading. Amendments to correct the omission of a required written instrument, an assignment or endorsement thereof, ~~or~~ the omission of a denial of the execution of a written instrument as permitted or required by this rule, or an Affidavit of Debt shall be governed by Rule 15, except as provided by subdivision (A) of this rule.

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Rule 23. Class actions

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(F) Disposition of Residual Funds.

(1) “Residual Funds” are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys’ fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the trial court from approving a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds, unless

otherwise agreed. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and its *pro bono* districts. The court may disburse the balance of any residual funds beyond the minimum percentage to the Indiana Bar Foundation or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

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Rule 39. Trial by jury or by the court

(A) **By jury.** When trial by jury has been demanded as provided in Rule 38, the action shall be designated ~~upon~~ in the ~~e~~C~~h~~ronological ~~e~~C~~a~~se ~~s~~S~~u~~mmary as a jury action. Issues upon which a jury trial is so demanded shall be tried by jury, subject to the following exceptions:

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Rule 51. Instructions to jury: Objections, requests: Submission in stages

(A) **Preliminary Instructions.** ~~General instructions at commencement of action.~~ When the jury has been sworn the court shall instruct the jury in accordance with Jury Rule 20 ~~writing as to the issues for trial, the burden of proof, the credibility of witnesses, and the manner of weighing the testimony to be received.~~ Each party shall have reasonable opportunity to examine these preliminary ~~such~~ instructions and state his specific objections thereto out of the presence of the jury and before any party has stated his case. (The court may of its own motion and, if requested by either party, shall reread to the jury all or any part of ~~the~~ such preliminary instructions ~~so given~~ along with the other instructions given to the jury at the close of the case. A request to reread any preliminary instruction does not count against the ten [10] instructions provided in subsection (D) below.) The parties shall be given reasonable opportunity to submit requested instructions prior to the swearing of the jury, and object to instructions requested or proposed to be given.

(B) **Final Instructions** ~~after arguments--On court's own motion--Request for written instructions.~~ ~~After argument the~~ The judge shall instruct the jury as to the law upon the issues presented by the evidence in accordance with Jury Rule 26. ~~Such instructions given by the court~~

~~of its own motion shall be in writing when any party so requests. This request must be made before the commencement of the argument.~~

(C) Objections and requested instructions before submission. At the close of the evidence and before argument each party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, ~~but the court shall instruct the jury after the arguments are completed.~~ No party may claim as error the giving of an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury. The court shall note all instructions given, refused or tendered, and all written objections submitted thereto, shall be filed in open court and become a part of the record. Objections made orally shall be taken by the reporter and thereby shall become a part of the record.

(D) Limit upon requested instructions. Each party shall be entitled to tender no more than ten [10] requested instructions, including pattern instructions, to be given to the jury; however, the court in its discretion for good cause shown may fix a greater number. Each tendered instruction shall be confined to one [1] relevant legal principle. No party shall be entitled to predicate error upon the refusal of a trial court to give any tendered instruction in excess of the number fixed by this rule or the number fixed by the court order, whichever is greater.

(E) Indiana Pattern Jury Instructions (Criminal)/Indiana Model Jury Instructions (Civil). Any party requesting a trial court to give any instruction from the Indiana Pattern Jury Instructions (Criminal)/Indiana Model Jury Instructions (Civil), prepared under the sponsorship of the Indiana Judges Association, may make such request in writing without copying the instruction verbatim, by merely designating the number thereof in the publication. ~~In event the trial court desires to give any instructions contained in said publication, it shall be sufficient to read the numbered instruction from the publication orally to the jury and indicate in the order book entry the number or numbers of such instructions, along with any objection thereto. It shall be unnecessary for the trial court to copy said instruction in writing and file the same with other written instructions given; provided, however, that in the event of an appeal, where any objections are made to the giving of such instructions or the refusal to give such instructions, such numbered instructions shall be set forth verbatim in the argument section of the brief where argument is presented with reference to the refusal to give or the giving of such numbered~~

instruction.

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Rule 53.1. Failure to rule on motion

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(C) **Time of ruling.** For the purposes of ~~Trial Rules 53.1, 53.2 and 53.3, Section (A) of this rule,~~ a court ~~is will be~~ deemed to have set a motion for hearing on the date the setting is noted in the Chronological Case Summary, and to have ruled on the date the ruling is noted in the Chronological Case Summary.~~or decided at the time the ruling or decision is entered into a public record of the court or at the time the ruling or decision is received in the office of the Clerk of the court for filing.~~

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(E) **Procedure for withdrawing submission.** Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing in the Clerk's praecipe book, record the filing in the eChronological eCase sSummary under the cause, and determine whether or not a ruling has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2.

(1) If the Clerk determines that the ruling or decision has not been delayed, the Clerk shall notify in writing all parties of record in the proceeding and record this determination in the eChronological eCase sSummary under the cause. The Clerk's determination under this subparagraph shall not be filed with the Indiana Supreme Court.

(2) If the Clerk determines that a ruling or decision has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2, the Clerk shall give written notice to the judge of the cause and the Supreme Court of Indiana that submission of the cause has been withdrawn effective as of the time of the filing of the praecipe and record this determination in the eChronological eCase sSummary under the cause. Accompanying the written notice to the Supreme Court of Indiana, the Clerk shall provide a copy of the praecipe filed and the eChronological eCase sSummary for the case.

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Rule 53.2. Time for holding issue under advisement; delay of entering a judgment

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(C) **Time of decision.** For the purpose of Section (A) of this rule, ~~The time at which~~ a court is deemed to have decided ~~shall be as set forth in Trial Rule 53.1(C)~~ on the date the decision is noted in the Chronological Case Summary.

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Rule 53.3. Motion to correct error: time limitation for ruling

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(C) **Time of ruling.** For the purposes of Section (A) of this rule, ~~The time at which~~ a court is deemed to have set a motion for hearing on the date the setting is noted in the Chronological Case Summary, and to have ruled ~~shall be as set forth in Trial Rule 53.1(C)~~ on the date the ruling is noted in the Chronological Case Summary.

(D) **Extension of time for ruling.** The Judge before whom a Motion to Correct Error is pending may extend the time limitation for ruling for a period of no more than thirty (30) days by filing an entry in the cause advising all parties of the extension. Such entry must be in writing, must be ~~filed~~ noted in the Chronological Case Summary before the expiration of the initial time period for ruling set forth under Section (A), and must be served on all parties. Additional extension of time may be granted only upon application to the Supreme Court as set forth in Trial Rule 53.1(D).

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Rule 59. Motion to correct error

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(C) **Time for filing: Service on judge.** The motion to correct error, if any, shall be filed not later than thirty (30) days after the entry of a final judgment is noted in the Chronological Case Summary ~~or an appealable final order~~. A copy of the motion to correct error shall be served, when filed, upon the judge before whom the case is pending pursuant to Trial Rule 5. The time at which the court is deemed to have ruled on the motion is set forth in T.R. 53.3.

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(G) **Cross errors.** If a motion to correct error is denied, the party who prevailed on that motion may, in the appellate brief and without having filed a statement in opposition to the

motion to correct error in the trial court, defend against the motion to correct error on any ground and may first assert grounds for relief therein, including grounds falling within sections (A)(1) and (2) of this rule. In addition, if a ~~Notice of~~ ~~Appeal~~ rather than a motion to correct error is filed by a party in the trial court, the opposing party may raise any grounds as cross-errors and also may raise any reasons to affirm the judgment directly in the appellate brief, including those grounds for which a motion to correct error is required when directly appealing a judgment under Sections (A)(1) and (2) of this rule.

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Rule 62. Stay of proceedings to enforce a judgment

(A) Execution. Execution may issue upon notation entry of a judgment in the Chronological Case Summary except as otherwise provided in this rule hereinafter. During the pendency of an appeal the provisions of subdivision (C) of this rule govern the suspending, modifying, restoring, or granting of an injunction, the appointment of a receiver or, to the extent that a stay is not otherwise permitted by law upon appeal, any judgment or order for specific relief other than the payment of money.

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(D) Stay upon appeal.

(1) Procedure for obtaining. No appeal bond or other security shall be necessary to perfect an appeal from any judgment or appealable interlocutory order. Enforcement of a judgment or appealable interlocutory order will be suspended during an appeal upon the giving of an adequate appeal bond with approved sureties, ~~or~~ an irrevocable letter of credit from a financial institution approved in all respects by the court, or other form of security approved by the court. The bond, ~~or~~ letter of credit, or other security may be given at or after the time of filing the notice of appeal. The stay is effective when the appeal bond, ~~or~~ letter of credit, or other form of security is approved by the appropriate court. The trial court or judge shall have jurisdiction to fix and approve the bond or letter of credit and order a stay pending an appeal as well as prior to the appeal. If the stay is denied by the trial court the appellate tribunal may reconsider the application at any time after denial; and this provision also shall apply to stays or relief allowed under subdivision (C) of this rule. When the stay or relief is granted by the court on appeal, the clerk of the Supreme Court shall issue a certificate thereof to the clerk of the court below who

shall file it with the judgment or order below and deliver it to the sheriff or any officer to whom execution or an enforcement order has been issued.

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Rule 72. Trial Court and Clerks

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(D) Notice of Orders or Judgments. Immediately upon the ~~entry~~ notation in the Chronological Case Summary of a ruling upon a motion, an order or judgment, the clerk shall serve a copy of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear and shall make a record of such mailing. Such mailing is sufficient notice for all purposes for which notice of the entry is required by these rules; but any party may, in addition, serve a notice of such entry in the manner provided in Rule 5 for the service of papers. In cases of consolidated proceedings involving ten (10) or more parties, the trial judge may provide by order for alternative method of notice to designated liaison parties who undertake responsibility for forwarding notice to all parties.

It shall be the duty of the attorneys when entering their appearance in a case or when filing pleadings or papers therein, to have noted on the Chronological Case Summary and on the pleadings or papers so filed, their mailing address, and service by mail at such address shall be deemed sufficient.

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Rule 77. Court records

(A) Required records. The clerk of the circuit court shall maintain the records for all circuit, superior, county, probate and municipal courts in the county.

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(2) The clerk of the circuit court shall also maintain the following records as specified under this rule:

- (a) Chronological ~~e~~Case ~~s~~Summary;
- (b) Case file;
- (c) Record of judgments and orders (order book); and

(d) Indexes.

(B) Chronological eCase sSummary. For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of the proceeding; the assigned case number; the names, addresses, telephone and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address and telephone number of the party so appearing; and the assessment of fees and charges (public receivables). Notation of judicial events in the Chronological Case Summary shall be made promptly, and shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. The date of every notation in the Chronological Case Summary should be the date the notation is made, regardless of the date the judicial event occurred. The eChronological eCase sSummary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the ~~entry notation~~ of judgments in the judgment docket (IC 33-32-3-2), and file status (pending/decided) under section (G) of this rule. The Chronological Case Summary may be kept in a paper format, or microfilm, or electronically. The eChronological eCase sSummary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.

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(J) Method of record keeping. Under the direction of the Supreme Court of Indiana, the clerk of the circuit court may, notwithstanding the foregoing sections, keep records in any suitable media. Records that must be maintained permanently pursuant to Administrative Rule 7 D. (Retention Schedules) (Trial Rule 77 Schedules (10)), must, if maintained electronically, be kept so that a hard copy can be generated at any time. The record keeping formats and systems and the quality and permanency requirements employed for the eChronological eCase sSummary, the case file, and the record of judgments and orders (order book) shall be approved by the division of state court administration for compliance with the provisions of this rule.

(K) Electronic Posting of Court Records. The clerk, with the consent of the majority of the judges in the courts of record, may make court records, including but not limited to the eChronological eCase sSummary, record of judgments and orders, index, and case file, available to the public through remote electronic access such as the Internet or other electronic method. The records to be posted, the specific information that is to be included, its format, pricing

structure, if any, method of dissemination, and any subsequent changes thereto must be approved by the Division of State Court Administration under the direction of the Supreme Court of Indiana. Such availability of court records shall be subject to applicable laws regarding confidentiality.

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Rule 79. Special judge selection: circuit, superior, and probate courts

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(D) Agreement of the parties. Within seven (7) days of the notation in the Chronological Case Summary of the order granting a change of judge or an order of disqualification, the parties may agree to an eligible special judge. The agreement of the parties shall be in writing and shall be filed in the court where the case is pending. Alternatively, the parties may agree in writing to the selection of an eligible special judge in accordance with Section (H). Upon the filing of the agreement, the court shall enter an order appointing such individual as the special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties or appoint a special judge under Section (H).

A judge appointed under this section shall have fifteen (15) days to decide whether to accept the case in accordance with Section (G).

This provision shall not apply to criminal proceedings or election contests involving the nomination or election of the judge of the court in which the contest is filed.

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(K) Appointment by Indiana Supreme Court. Upon the certification of a request for appointment of a special judge under Trial Rules 53.1, 53.2, 60.5, I.C. 34-13-5-4, as added by P.L. 1-1998, SEC.8, governing public lawsuits, and this rule, the Supreme Court may appoint any person eligible for service under Section (J) or any member of the Bar of this state as special judge. The order of appointment of a special judge by the Indiana Supreme Court shall be ~~entered-noted~~ in the Chronological Case Summary, entered in the ~~and~~ Record of Judgments and Orders, and served on all parties in the proceeding in accordance with Trial Rule 72(D) by the Clerk of the trial court. Such order vests jurisdiction in the special judge, and an oath shall only be required for members of the Bar appointed under this Section.

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(N) Place of Hearing.

- (1) Absent the transfer of the case as set forth in Section (M), special judges are encouraged to employ procedures such as the use of facsimile transmissions and telephone conferences that reduce the need for travel.
- (2) A special judge may entertain motions and perform all administrative tasks and conferences with counsel in his or her own county.
- (3) All hearings involving in-person testimony by witnesses shall be conducted in the court where the case is pending unless:
 - (a) the parties and the judge agree otherwise on the record, or
 - (b) the hearing is not before a jury and the special judge determines that exceptional circumstances exist such that the matter can only be heard in a timely fashion in his or her own county.
- (4) All decisions, orders, and rulings shall be noted ~~recorded~~ promptly ~~in~~ the Chronological Case Summary and, when appropriate, the Record of Judgments and Orders of the court where the case is pending and shall be served in accordance with Trial Rule 72(D). It is the duty of the special judge to effect the prompt execution of this rule. A court is deemed to have ruled ~~at the time the ruling or decision is entered into a public record of or is received in the office of the clerk of the court where the case is pending.~~ on the date the ruling is noted in the Chronological Case Summary.
- (5) It is the duty of the judge of the court where the case is pending to assure the availability of facilities and staff for the special judge.

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APPENDIX A-2
Affidavit of Debt

Comes now affiant, and states:

I _____ am ☐ Plaintiff

(Name of Affiant)

OR

☐ a designated full-time employee of _____ (Plaintiff).
(Name of Plaintiff)

I am of adult age and am fully authorized by Plaintiff to make the following representations. I am familiar with the recordkeeping practices of Plaintiff. The following representations are true according to documents kept in the normal course of Plaintiff's business and/or my personal

knowledge:

Plaintiff:

☐ is the original owner of this debt.

OR

☐ has obtained this debt from _____ and the original owner of this debt was _____.

_____, Defendant, has an unpaid balance of \$ _____ on account _____.
(Name of Defendant) (last 4 digits of number or id only)

That amount is due and owing to Plaintiff. This account was opened on _____.

The last payment from Defendant was received on _____ in the amount of \$ _____.

The type of account is:

☐ Credit card account (i.e. Visa, Mastercard, Department Store, etc.)

List the name of the Company/Store issuing credit card: _____

☐ Account for utilities (i.e. telephone, electric, sewer, etc.)

☐ Medical bill account (i.e. doctor, dentist, hospital, etc.)

☐ Account for services (i.e. attorney fees, mechanic fees, etc.)

☐ Judgment issued by a court (a copy of the judgment is required to be attached)

☐ Other: (Please explain) _____

This account balance includes:

☐ Late fees in the amount of \$ _____ as of _____.
(Month, Day, Year)

☐ Other (Explain _____)

☐ Interest at a rate of _____ % beginning on _____.
(Month, Day, Year)

Plaintiff:

☐ is seeking attorney's fees and additional evidence will be presented to the court prior to entry of judgment on attorney's fees.

OR

☐ is not seeking attorney's fees.

Plaintiff believes that defendant is not a minor or an incompetent individual.

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Dated: _____ Signature of Affiant: _____

These amendments shall take effect January 1, 2011.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana

Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 21st day of September, 2010.

/s/Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.